

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Rural Health Care Support Mechanism)	WC Docket No. 02-60
)	
Promoting Telehealth in Rural America)	WC Docket No. 17-310
)	

ORDER

Adopted: March 8, 2023

Released: March 8, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. By this Order, the Wireline Competition Bureau (Bureau) waives section 54.621(a)(1) of the Commission's rules and extends the close of the funding year 2023 application filing window for the Rural Health Care (RHC) Program until May 1, 2023. We take this targeted action in response to two requests to waive the application filing deadline based in part on the continuing disruptions that health care providers are experiencing due to the COVID-19 pandemic.¹ While we will continue to monitor the effects of COVID-19 on health care providers, we anticipate that this deadline extension will be the final RHC Program deadline extension that we adopt due to the pandemic.

II. BACKGROUND

2. The Commission's RHC Program consists of two component programs: (1) the Telecommunications (Telecom) Program; and (2) the Healthcare Connect Fund (HCF) Program.² Eligible health care providers apply for support for eligible services by submitting funding requests (an FCC Form 466 in the Telecom Program or an FCC Form 462 in the HCF Program) to the Universal Service Administrative Company (USAC) during an application filing window.³ In the 2019 *Promoting Telehealth Report and Order*, the Commission revised its application filing window rules, which took effect beginning in funding year 2021.⁴

3. Section 54.621(a)(1) of the Commission's rules directs USAC to open an application filing window with an end date no later than 90 days prior to the start of the funding year (i.e., no later

¹ See Request for Waiver by the New England Telehealth Consortium and the Connections Telehealth Consortium, WC Docket Nos. 02-60 and 17-310 at 1 (filed Feb. 13, 2023) (NETC and CTC Request for Waiver); Request for Waiver by the Schools, Health & Libraries Broadband Coalition, WC Docket Nos. 02-60 and 17-310 at 1-3 (filed Feb. 24, 2023) (SHLB Request for Waiver).

² *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 34 FCC Rcd 4136, 4136, para. 2 (2019) (*Funding Year 2018 Demand Order*).

³ See *Funding Year 2018 Demand Order*, 34 FCC Rcd at 4139, para. 10; *WCB Provides a Filing Window Period Schedule for Funding Requests under the Telecom Program and the Healthcare Connect Fund*, WC Docket No. 02-60, Public Notice, 31 FCC Rcd 9588, 9589, 9592 (WCB 2016).

⁴ *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7416-17, 7433, paras. 176, 214 (2019) (*Promoting Telehealth Report and Order*). The RHC Program funding year begins on July 1 of each calendar year and ends June 30 of the next calendar year. See 47 CFR § 54.600(a).

than April 1).⁵ The Commission established the requirement of the April 1 end date for the application filing window to provide more certainty to applicants by creating a consistent application filing window close date each year, to give USAC time to begin processing submitted RHC Program applications before the funding year begins, and to give USAC sufficient time to publish a gross demand estimate prior to the start of the funding year.⁶ In establishing a consistent application filing window close each year, the Commission also directed USAC to publish a gross demand estimate 30 days before the start of the applicable funding year and allowed the Bureau to require a demand estimate to be filed at a different time if warranted by new circumstances.⁷ In addition, the Bureau, in conjunction with the Office of the Managing Director, must determine the amount of unused funding from previous funding years available to be used in the current funding year by the end of the second quarter of each calendar year.⁸ On August 4, 2022, USAC announced that the funding year 2023 application filing window would close on April 3, 2023.⁹

4. In March 2020, the Bureau extended the RHC Program funding year 2020 application filing window until June 30, 2020, at a time when the COVID-19 outbreak was rapidly spreading nationwide and starting to cause significant disruptions to health care providers.¹⁰ In February 2021, as the COVID-19 pandemic continued to cause significant disruptions to health care providers, the Bureau waived section 54.621(a)(1) of the Commission's rules and extended the window to June 1, 2021.¹¹ In March 2022, the Bureau again waived section 54.621(a)(1) and extended the window to June 1, 2022 in light of the persistent and ongoing disruptions caused by the COVID-19 pandemic and the shortage and burnout of health care staff aggravated by the surge of the Omicron variant.¹²

5. On February 13, 2023, the New England Telehealth Consortium (NETC) and the Connections Telehealth Consortium (CTC) filed a Request for Waiver that asks the Commission to waive the April 3, 2023 filing deadline for funding year 2023 and extend the filing window to May 31, 2023 specifically for NETC and CTC.¹³ The Request for Waiver argues that USAC's funding year 2022 application processing delays and requests for information, funding year 2023 FCC Form 461 reviewing delays, issues related to USAC's MyPortal update, and ongoing effects of the COVID-19 pandemic warrant the waiver and extension.¹⁴ On February 24, 2023, the Schools, Health & Libraries Broadband (SHLB) Coalition filed a Request for Waiver that asks the Commission to extend the filing window for all RHC Program participants until May 1, 2023, citing similar reasons as those cited by NETC and CTC.¹⁵

⁵ 47 CFR § 54.621(a)(1); *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7416, para. 176.

⁶ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7416, para. 176.

⁷ *Id.* at 7416, para. 176 & n.532.

⁸ *See* 47 CFR § 54.619(a)(5).

⁹ *See* USAC, Rural Health Care, August 2022 RHC Monthly Newsletter, at 1 (Aug. 4, 2022), <https://www.usac.org/wp-content/uploads/rural-health-care/documents/monthly-newsletter/2022-newsletters/RHC-Newsletter-August-2022.pdf>. The funding year 2023 filing window closes on April 3, 2023 because April 1, 2023 is a Saturday. *See* 47 CFR § 1.4(j).

¹⁰ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 2922, 2924, para. 6 (WCB 2020) (*COVID-19 RHC Relief Order*).

¹¹ *Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 36 FCC Rcd 1604, 1604, para. 1 (WCB 2021).

¹² *Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, DA 22-221, 2022 WL 658878, at *1, para. 1 (WCB Mar. 3, 2022).

¹³ NETC and CTC Request for Waiver at 1.

¹⁴ *Id.* at 1-4.

¹⁵ SHLB Request for Waiver at 1-3.

III. DISCUSSION

6. We grant the Request for Waiver of SHLB in full and the Request for Waiver of NETC/CTC in part by waiving section 54.621(a)(1) of the Commission's rules¹⁶ and directing USAC to extend the close of the funding year 2023 filing window to May 1, 2023 for all RHC Program participants. The Commission's rules may be waived for good cause shown.¹⁷ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁸ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁹ Waiver of the Commission's rules is appropriate if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.²⁰

7. We find that the lingering effects of the COVID-19 pandemic provide the necessary special circumstances to support a limited 28-day extension of the funding year 2023 filing window to May 1, 2023. Both NETC/CTC and SHLB cite the effects of COVID-19 and its aftermath on health care providers as a factor supporting their requests for relief.²¹ We also acknowledge that the extended filing deadline falls within the national emergency and public health emergency first declared in 2020 and now set to expire on May 11, 2023.²² Accordingly, we conclude that the public interest would best be served by again waiving the filing deadline requirements of section 54.621(a)(1) to account for the effects of COVID-19. However, given the imminent end of the national emergency and public health emergency, barring unforeseen new developments, we do not anticipate extending the filing window for future funding years or waiving any other RHC Program deadline.

8. We reject the primary reasons advanced by NETC/CTC and SHLB in support of their waiver requests. The parties cite the late processing of funding year 2022 applications, the issuance of a high number of information requests, and delays experienced when using the MyPortal platform as reasons warranting an extended filing window.²³ We find that none of these reasons provide a basis for waiving section 54.621(a)(1) and extending the application filing window. Although RHC Program funding requests have been processed much faster in recent years than in the past, there are still a limited number of applications from funding year 2022 that remain pending. The delays experienced by the petitioners are likely the result, at least in part, of the two-month extension of the funding year 2022 filing window, which compressed the amount of time USAC was given to process last year's applications. As such, we find that processing delays do not on their own provide the level of special circumstances necessary to waive a Commission rule.²⁴ To the extent NETC, CTC, SHLB, or any other health care provider does not yet have an evergreen contract determination from the previous funding year,²⁵ they should proceed with competitive bidding to ensure that they will be able to file their applications on time.

¹⁶ 47 CFR § 54.621(a)(1).

¹⁷ 47 CFR § 1.3.

¹⁸ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁰ *Northeast Cellular*, 897 F.2d at 1166.

²¹ NETC and CTC Request for Waiver at 4; SHLB Request for Waiver at 3, n.4.

²² See Executive Office of the President, Office of Management and Budget, Statement of Administration Policy (Jan. 30, 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf>. See also NETC and CTC Request for Waiver at 5; SHLB Request for Waiver at 3, n.4.

²³ NETC and CTC Request for Waiver at 1-4; SHLB Request for Waiver at 1-3.

²⁴ See *Northeast Cellular*, 897 F.2d at 1166.

²⁵ See NETC and CTC Request for Waiver at 2; SHLB Request for Waiver at 2.

Further, health care providers are expected to have the resources to respond to information requests in a timely manner and to withstand normal platform processing times.²⁶

9. We also decline to extend the end of the application filing window for two months instead of one month and provide relief to only NETC/CTC as requested by NETC/CTC. Although the national emergency and public health emergency have not yet expired, health care providers are in a much better position to manage administration of the RHC Program than they have been since the pandemic began. Further, extending relief to a small subset of health care providers who are no differently situated than many other health care providers would unduly prejudice those other health care providers.

10. Finally, we adjust two deadlines that are associated with the close of the filing window. First, we direct USAC to file the RHC Program gross demand estimate by July 1, 2023. The delay of the close of the application filing window until May 1, 2023 makes it difficult for USAC to provide a demand estimate 30 days before the start of funding year 2023, the deadline contemplated in the *Promoting Telehealth Report and Order*.²⁷ Requiring USAC to file its gross demand estimate by July 1, 2023 will give it approximately the same amount of time to prepare the estimate as it would have had without an extension of the close of the application filing window.²⁸ Second, we waive the requirement in section 54.619(a)(5) of the Commission's rules requiring that the determination of the amount of unused funding from previous funding years available to carry forward to the current funding year be made in the second quarter.²⁹ To align this deadline with the window close and gross demand estimate deadline, we now require that determination to be made in the third quarter of 2023.³⁰

IV. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.719(c) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, and 54.719(c), the waiver request of the Schools, Health & Libraries Coalition IS GRANTED to the extent described herein.

12. IT IS FURTHER ORDERED that the waiver request of the New England Telehealth Consortium/Connections Telehealth Consortium IS GRANTED IN PART and DENIED IN PART as described herein.

13. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.719(c) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, and 54.719(c), that

²⁶ It is our understanding that any implementation issues associated with MyPortal have been limited in scope and duration and should not present a material reason for a delay in an applicant's ability to submit an application.

²⁷ *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7416, para. 176 & n.532 (requiring that USAC provide a "gross demand estimate 30 days prior to the start of the pertinent funding year.").

²⁸ Thirty days prior to the start of the funding year is June 1. *See* 47 CFR § 54.600(a). If the application filing window closed on April 3, USAC would have about two months to provide a gross demand estimate.

²⁹ *See* 47 CFR § 54.619(a)(5).

³⁰ When the Commission adopted section 54.619(a)(5), it also directed the Bureau to announce a specific amount of unused funds from prior funding years to be carried forward to increase available funding for future funding years in the second quarter. *See Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 33 FCC Rcd 6574, 6584-85, para. 27 (2018) ("The Bureau will announce the availability and amount of carryover funds during the second quarter of the calendar year."). We require the announcement of the availability and amount of carryover funds to be made in the third quarter of 2023.

sections 54.619(a)(5) and 54.621(a)(1) of the Commission's rules, 47 CFR §§ 54.619(a)(5), 54.621(a)(1), are WAIVED to the extent provided herein.

14. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau